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September 9, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

In re Matter of the Pay Telephone
Reclassification and Compensation
Provisions of the Telecommunications
Act of 1996, **CC Docket No. 96-128**

Dear Mr. Caton:

The RBOC Payphone Coalition submits this letter to respond to the staff members' request for citations regarding the deregulation of payphone rates in various states. They are as follows:

1. Iowa: Order Adopting Rules, In re: Terminal Equipment -- Amendments to Chapters 22 and 16, Docket No. RMU-85-6 (Iowa State Commerce Commission July 26, 1985).
2. Montana: Final Order, In the Matter of the Application for Mountain States Telephone and Telegraph (U S West Communications or Mountain Bell), Dkt. Nos. 88.1.2, 88.9.33, 88.8.44, Order No. 5354d, at 123, ¶ 272 (Montana Pub. Serv. Comm'n May 3, 1989).
3. Nebraska: R.R.S. Neb. §§ 86-801, 86-803.
4. North Dakota: North Dakota Century Code § 49.21-01.1.4 (Michie).

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Mr. William F. Caton
September 9, 1996
Page 2

5. South Dakota: Order Reclassifying Various Telecommunications Services, In the Matter of the Investigation into the Reclassification of Telecommunications Services, No. TC92-026 (S.D. Pub. Utils. Comm'n Nov. 2, 1992).
6. Wyoming: Wyo. Stat. Ann. § 37-15-104(a)(ii).

Copies of the statutes and excerpts from the relevant state agency decisions are attached hereto.

Please include this letter in the record of this proceeding. If you have any questions concerning this matter, please contact me at (202) 326-7902.

Thank you for your consideration.

Yours sincerely,


Michael K. Kellogg

cc: M. Carowitz
R. Crellin
R. Spangler
G. Reynolds

STATE OF IOWA
IOWA STATE COMMERCE COMMISSION

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IN RE:

TERMINAL EQUIPMENT--AMENDMENTS TO
CHAPTERS 22 AND 16

DOCKET NO. RMU-85-6

ORDER ADOPTING RULES

(Issued July 26, 1985)

The Commission commenced this rulemaking by order issued April 5, 1985. The proposed rulemaking was published in the Iowa Administrative Bulletin on April 24, 1985, as ARC 5479. The notice of oral presentation was published in the Iowa Administrative Bulletin on June 19, 1985, as ARC 5611. The Commission received oral comments on these rules on July 9, 1985. The Commission now adopts the rules with some minor modifications. The reasons for adoption and modification are given in the adopted rules attached to and incorporated by reference in this order.

IT IS THEREFORE ORDERED:

1. Iowa Admin. Code 250--16 and 22 are amended as set forth in the adopted rules attached to and incorporated to by reference in this order. The rules will become effective on September 18, 1985, pursuant to Iowa Code Section 17A.5(2) (1985).

2. The Executive Secretary shall cause to be published a notice of the adopted rules in the Iowa Administrative Bulletin in the form attached to and incorporated by reference in this order.

3. Within 60 days from the issuance of this order, all local exchange telephone utilities in Iowa shall file tariffs consistent with the adopted rules.

IOWA STATE COMMERCE COMMISSION

And Varly
Chairperson

Commissioner

[Signature]
Commissioner

ATTEST:

Geraldine E. Falsom
Executive Secretary, Assistant to

Dated in Des Moines, Iowa, this 26th day of July, 1985.

COMMERCE COMMISSION [250]
ADOPTED RULES

The Iowa State Commerce Commission gives notice that on July 26, 1985, the Commission issued an order in Docket No. RMU-85-6, In Re: Terminal Equipment--Amendments to Chapters 22 and 16, "Order Adopting Rules." The adopted rules amend Iowa Admin. Code 250--16 and 22. The notice of intended action was published in the Iowa Administrative Bulletin on April 24, 1985, as ARC 5479. Notice of an oral presentation was published in the Iowa Administrative Bulletin on June 19, 1985, as ARC 5611. An oral presentation was held July 9, 1985. The general purpose of this rulemaking is to implement deregulation of all terminal equipment, including pay telephone equipment. The statutory authority for these rules is found in Iowa Code Sections 476.1 and 476.2 (1985).

Interested persons were allowed to submit written and oral comments on the proposed rules. The Commission received comments from United Telephone Company of Iowa, Northwestern Bell Telephone Company, Central Telephone Company, PayTel Systems, Inc., Iowa Telephone Association, Dennis Communications, Office of Consumer Advocate, General Telephone Company of the Midwest, QuikTrip Corporation, Jim Kinning, and American Communications, Inc.

The Commission has considered the comments and adopts the rules with minor modifications.

The Iowa Telephone Association noted that Chapter 22 no longer uses the term "CPE" or "customer premise equipment," and instead uses the term "terminal equipment." The ITA

suggests that references to "CPE" in Chapter 22 be eliminated. The Commission has made modifications to eliminate the term.

The QuikTrip Corporation recommended that the Commission identify several specific accounts affected by this rulemaking. Though the rules as proposed specify some affected accounts, they contain a general requirement that all investments, revenues and expenses associated with pay telephone equipment be removed from regulated accounts. The Commission does not believe it is necessary to specify any additional affected accounts. The Commission also will not adopt QuikTrip's suggestion that Northwestern Bell be required to form a separate subsidiary for its pay phone operations. Iowa Code Section 476.1 permits telephone companies in Iowa to have both regulated and unregulated operations.

Many local exchange companies expressed concern about stranded investment. They wished to be allowed to amortize expected losses due to deregulation above-the-line. The Commission will not allow any such losses to be charged to ratepayers. Pay telephone facilities have been found to be subject to competition and by law must be deregulated. This rulemaking seeks to implement deregulation. Iowa Code Section 476.1 does not appear to allow for above-the-line amortization because it states that, upon deregulation, all investment, revenues and expenses associated with the competitive service or facility are removed from regulated operations. The local exchange companies assert that above-the-line amortization is fair because a certain amount

of investment in pay phones was required by a Commission rule (which is rescinded in this rulemaking). The local exchange companies fail to acknowledge that they could have sought a waiver of this requirement where provision of pay phone service was not economically feasible.

Deregulation of pay telephones by the Iowa State Commerce Commission does not affect regulations of pay telephones issued by the Federal Communications Commission.

The amendments shall become effective September 18, 1985, pursuant to Iowa Code Section 17A.5(2).

Item 1. Amend subrule 250--22.1(3) as follows:

Rescind the definition of "coin-operated, public, semipublic or pay telephone equipment."

Rescind the definition of "CPE transition date."

Rescind the definition of "customer premise equipment."

Item 2. Amend subrule 250--22.1(3) further by rescinding the definition of "terminal equipment" and inserting in its place:

"Terminal equipment" means all telephone instruments, including pay telephone equipment, the common equipment of large and small key and PBX systems and other devices and apparatus, and associated wirings, which are intended to be connected electrically, acoustically or inductively to the telecommunication system of the telephone utility.

Item 3. Amend subrule 250--22.1(3) further by revising the definition of "customer provision" as follows:

"Customer provision" means customer purchase or lease of

CPE terminal equipment or ~~purchase of new inside station wiring from the telephone company or customer purchase or lease of CPE or new inside station wiring~~ from any other supplier.

Item 4. Amend subrule 250--22.1(3) further by revising the definition of "other supplier" as follows:

"Other supplier" means the customer or any entity other than the telephone utility providing, repairing, or maintaining CPE terminal equipment or new inside station wiring or repairing or maintaining existing inside station wiring.

Item 5. Amend subrule 250--22.1(4) by striking "CPE--Customer Premise Equipment" from the list of abbreviations.

Item 6. Rescind subrule 250--22.2(6), paragraph "j."

Item 7. Amend subrule 250--22.3(2), paragraph "g" as follows:

g. Placed under the prominent heading "Customers' Rights To Own And Provide Their Own Telephones, Other ~~Customer Premise Terminal~~ Equipment And New Inside Station Wiring," each directory shall provide the following information ~~that:~~

(1) A customer has the right to provide and own ~~telephones, other CPE terminal equipment~~ and new inside station wiring. ~~Existing inside station wiring is provided by the telephone utility~~

(2) A customer is not required to buy or lease ~~telephones or other CPE terminal equipment~~ from the telephone utility in order to receive service.

(3) A customer is not required to use the services of

the telephone utility for the installation of new inside station wiring or CPE terminal equipment. Upon request, the telephone utility will provide technical information for new inside station wiring or CPE terminal equipment.

(4) The charges for transmission services, connections, disconnections or service checks shall not be preferential due to the fact that telephones, or other CPE terminal equipment or new inside station wiring are provided by the telephone utility or other suppliers.

(5) A definition of terminal equipment.

Item 8. Rescind subrule 250--22.3(6) and insert in its place:

22.3(6) Pay telephone services and facilities.

All telephone utilities shall make available to customers provisions for the interconnection of pay telephone equipment.

Item 9. Amend subrule 250--22.3(10), paragraph "c" as follows:

c. There shall be no charge for telephone directory assistance calls originating from ~~coin telephones~~, hotels and motels, or hospitals.

Item 10. Rescind rule 250--22.9(476) and insert in its place:

250--22.9(476) Terminal equipment. Terminal equipment is deregulated. Customers may secure terminal equipment through any provider.

Item 11. Amend rule 250--22.10(476) by changing paragraph "a" to subrule 22.10(1) and subparagraphs (1), (2) and (3) to "a," "b" and "c"; also change paragraph "b" to subrule 22.10(2) and amend subrule 22.10(1) as follows:

(1) a. A telephone utility shall inform, in writing, all employees who may handle customer complaints, requests for information and communication services or equipment items which may be provided by customers, of the provisions of 22.3(6), 22.3(13), 22.4(1)"a"(2), 22.9(476) and 22.11(476).

Item 12. Amend renumbered subrule 22.10(1), paragraph "b" as follows:

(2) b. Telephone utility personnel ~~are required to~~ shall provide applicable rates and charges or any other information contained in the utility tariff, to answer inquiries as to the absence or presence of telephone utility equipment or services at a specified location, and to provide specifications which will permit customer-provided GPE terminal equipment and new inside station wiring to gain access to the telephone network.

Item 13. Amend subrule 250--22.13(2), paragraph "b," subparagraph (2) as follows:

(2) Intrastate tolls - toll DDD service; operator-assisted; ~~coin toll service,~~ and WATS.

Item 14. Amend subrule 250--16.5(5) by amending and alphabetizing the following definition:

~~"Coin-operated, public, semipublic or pay~~ telephone equipment" means equipment used in the provision of coin-operated, calling card or pay telephone service to the public, including telephone sets, housings, booths, public telephone signs and other associated equipment.

Item 15. Amend subrule 250--16.5(5) further by adding the following definition:

"Terminal equipment" means all telephone instruments,

including CPE and pay telephone equipment, the common equipment of large and small key and PBX systems and other devices and apparatus, and associated wirings, which are intended to be connected electrically, acoustically or inductively to the telecommunication system of the telephone utility.

Item 16. Amend subrule 250--16.5(6) by deleting "6. Electric current consumed in illuminating public telephone signs" under 31.642.1 C Items. Renumber remaining items.

Item 17. Amend subrule 250--16.5(12) by deleting the words "and 'Public telephone equipment (account 235).'"

Item 18. Amend subrule 250--16.5(15) by adding the words "and pay telephone equipment" after the words "customer premise equipment" in line 2 and by adding the words "and pay telephone equipment" after the words "customer premise equipment" on line 5.

Item 19. Amend subrule 250--16.5(16) by deleting the words beginning with "Add new letter (e)" and all subsequent words to the end of the subrule.

Item 20. Amend subrule 250--16.5(17) by adding the following after the first paragraph: "This account shall also include the cost of materials and supplies held for use in the provision of repair service on pay telephone equipment. Inventory shortages and overages shall be charged and credited, respectively, to account 317 or 318."

Item 21. Amend subrule 250--16.5(18) by deleting paragraph (b). Paragraph (c) will be renumbered as paragraph (b) and amended by deleting the words "paragraphs (a) and (b) of" and the words "or of the extensive

replacements in account 235, Public and semipublic telephone equipment."

Item 22. Amend subrule 250--16.5(19) by adding the following:

Add new note (f) to section 31.171 to read as follows:

(f) After the effective date of deregulation of pay telephones, accumulated depreciation for pay telephone equipment will no longer be recorded in this account, but shall be credited in account 178.

Item 23. Amend subrule 250--16.5(20) by adding new section 31.178 as follows:

31.178 Depreciation reserve for pay telephone equipment. This account shall include the accumulated depreciation on pay telephone equipment transferred to this account from account 31.171, Depreciation reserve. Furthermore, this account will include additional accumulations of depreciation with the corresponding charge to account 31.318, Cost and expenses of operating pay telephone equipment.

Item 24. Amend subrule 250--16.5(21) by deleting the words "installing or connecting public and semipublic telephone equipment."

Item 25. Amend subrule 250--16.5(22) by adding the words "or pay telephone equipment" to the last sentence after the words "customer premise equipment."

Item 26. Amend subrule 250--16.5(26) by deleting the words "public and semipublic telephone equipment" in paragraph (e).

Item 27. Amend subrule 250--16.5(26) further by adding the following:

Add new instruction for telephone plant accounts to read as follows:

31.2-29 After the effective date of deregulation of pay telephones, the installation, maintenance and operation of pay telephone equipment shall be a nonutility function, and the associated investments, costs and revenues shall not be included in a telephone utility's revenue requirement for ratemaking purposes.

Item 28. Amend subrule 250--16.5(30) by deleting the words beginning with "Add new section 31.235" and all subsequent words to the end of the subrule.

Item 29. Amend subrule 250--16.5(34) by adding the words: Add new sections 31.317 and 31.318 as follows:

31.317 Revenues from pay telephone equipment.

31.318 Cost and expenses of operating pay telephone equipment.

(a) The accounts shall include, respectively, all revenues derived from the lease or sale, installation, and maintenance of pay telephone equipment and all expenses incurred in such activities.

(b) Records in support of these accounts shall be so kept as to permit ready summarization of revenues, costs and expenses by major items such as equipment leases or sales, repair revenues, cost of goods sold, sales labor, installation labor, repair labor, materials and supplies for installation, maintenance and repair billing costs, advertising and promotions, administrative and supervisory labor, office supplies and expenses, rents, insurance, pensions and benefits, depreciation and taxes.

(c) The items in accounts 317 and 318 shall be the same as in accounts 319 and 320, respectively, except that references to "customer premise equipment" shall be replaced by references to "pay telephone equipment."

Item 30. Amend subrule 250--16.5(36) by inserting at the beginning of the subrule:

Revise paragraph (a) of section 31:5-50 by deleting the third sentence.

Item 31. Amend subrule 250--16.5(36) further by striking the words "232, 233 and 235" in the subrule and inserting in their place "232 and 233."

Item 32. Amend subrule 250--16.5(36) further by adding at the end of the subrule:

Add new paragraph (e) to section 31:5-50 to read as follows:

(e) Revenues applicable to pay telephone equipment shall be recorded in account 317, Revenues from pay telephone equipment. None of these revenues will be recorded in operating revenue accounts 500 to 530.

Item 33. Amend subrule 250--16.5(36) further by adding the following after the first sentence in the note in section 31.6-60:

Expenses applicable to pay telephone equipment shall be recorded in account 318, Cost and expenses of operating pay telephone equipment.

Item 34. Amend subrule 250--16.5(36) further by inserting the following paragraph after paragraph (d) which ends with "500 to 530":

Delete section 31.501 Public telephone revenues.

Item 35. Amend subrule 250--16.5(37) by rescinding paragraph (c) and inserting in its place:

(c) The cost of repairs may include certain costs of station installations, and the costs of reinstalling, connecting, disconnecting, and removing station apparatus, but if these expenses or any other repair expenses are associated with pay telephone equipment or customer premise equipment, they will be recorded in accounts 318 or 320, respectively.

Item 36. Amend subrule 250--16.5(41) by deleting the ITEMS "House service for public telephones" and "Repainting and other repairs of booths."

Item 37. Amend subrule 250--16.5(41) further by adding the words "and pay telephone equipment" to NOTE after the words "Customer premise equipment," and by adding "Pay telephone equipment is accounted for in account 318" to the end of NOTE.

Item 38. Amend subrule 250--16.5(42) by inserting the following at the end:

Delete sections 31.632, Public telephone expenses and 31.648, Public telephone commissions.

Delete (a) and (b) from section 31.650, Other commercial expenses.

NOTE: All expenses associated with pay telephone equipment shall be recorded in account 318.

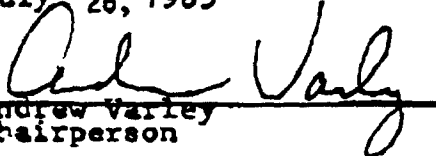
Item 39. Amend subrule 250--16.5(44) by adding the words "pay telephone equipment and" to line 7 before "telephone utility owned customer premise equipment" and rescind the words "The remaining asset categories" and replace with the words "The official company station equipment category."

Item 40. Amend subrule 250--16.5(45) by adding the words "and pay telephone equipment" to line 10 after "CPE," by deleting the words "not applicable to customer premise equipment" in line 12, by adding the words "pay telephone equipment and" to line 14 before "customer premise equipment," and by changing "customer premise" in lines 14-15 to "respective."

Item 41. Rescind subrule 250--16.5(46) and replace it with the following:

16.5(46) When the pay telephone equipment is transferred from the regulated rate base, the telephone company will record the original cost of the equipment in account 31.103, Miscellaneous physical property. The current rules associated with account 31.103 that pertain to recording all revenues and expenses below-the-line, namely account 31.317, Revenues from pay telephone equipment, and account 31.318, Cost and expenses of operating pay telephone equipment, will continue. The appropriate depreciation reserve associated with pay telephone equipment will be recorded in account 31.178, Depreciation reserve for pay telephone equipment. All applicable taxes will be recorded in accounts 31.326, Federal income taxes-nonoperating, 31.327, Other nonoperating taxes and account 31.176.2, Accumulated deferred income taxes-other.

July 26, 1985


Andrew Varley
Chairperson

Service Date: May 3, 1989

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER of the Application)	
of MOUNTAIN STATES TELEPHONE AND)	UTILITY DIVISION
TELEGRAPH (U S WEST Communications)	
or Mountain Bell) for a General)	DOCKET NO. 88.1.2
Rate Increase.)	

IN THE MATTER of the Application)	
of MOUNTAIN STATES TELEPHONE AND)	
TELEGRAPH (U S West Communications)	
or Mountain Bell) for Authority to)	DOCKET NO. 88.9.33
Incorporate An 800 Service Circuit)	
Termination on a Centron 6 or 30)	
Service.)	

IN THE MATTER Of The Application)	
Of MOUNTAIN STATES TELEPHONE AND)	
TELEGRAPH (Mountain Bell or U S)	DOCKET NO. 88.8.44
West Communications) for Authority)	
To Incorporate Revised Directory)	
Assistance Tariffs Into Its Tariff)	
To State Alternative Terms of)	ORDER NO. 5354d
Service For Customers of Independ-)	
ent Local Exchange Carriers.)	

FINAL ORDER

short or long run marginal or incremental cost analysis may be appropriate for determination of price floors for detariffed services. Further comments on these criteria and USWC's burden of proof of competition, per the Montana Telecommunications Act, are reviewed under each detariffing proposal below.

272. The Commission grants USWC's price detariffing proposals for the message portion of local Public and Semi-Public Coin Telephone Service, the recurring and nonrecurring charges for the installation, change in service configuration and recurring monthly charges for Speed Calling, Call Forwarding, and Three-Way Calling features of Custom Calling, and the recurring and nonrecurring charges for the nonaccess portions of Centron services.

273. For reporting and tracking purposes, the Commission orders USWC to adhere to the following requirements regarding price detariffing of the message portion of public and semi-public Coin Telephone Service, Call Forwarding, Three-Way Calling, and Speed Calling. With respect to the custom calling services, USWC is required to provide the Commission and subscribers 40 day's written notice of intended price changes. With respect to the message portion of public and semi-public coin telephone service, USWC is required to provide notice to the Commission (and notice to the public through advertising) of price changes on or before the effective date. The Commission's purpose for these notices is so customers will be able to make rational purchasing decisions based on timely information.

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*** CURRENT THROUGH THE 1995 FIRST SESSION OF THE LEGISLATURE ***

CHAPTER 86. TELECOMMUNICATIONS AND EXPRESS COMPANIES
ARTICLE 8. TELECOMMUNICATIONS

R.R.S. Neb. § 86-801 (1995)

§ 86-801. Legislative policy

The Legislature declares that it is the policy of the state to:

- (1) Preserve affordable telecommunications services;
- (2) Maintain and advance the efficiency and availability of telecommunications services;
- (3) Ensure that consumers pay only reasonable charges for telecommunications services; and
- (4) Promote diversity in the supply of telecommunications services and products throughout the state.

HISTORY: Laws 1986, LB 835, § 1.

JUDICIAL DECISIONS

CONSTITUTIONALITY

On appeal supreme court held similar prior law to be specific legislation which constitutionally restricted the public service commission's regulatory power pursuant to the *Nebraska Constitution*. *State ex rel. Spire v. Northwestern Bell Tel. Co.*, 233 Neb. 262, 445 N.W.2d 284 (1989).

RESEARCH REFERENCES

CREIGHTON LAW REVIEW.

The laissez-faire approach to telecommunications rate regulation: *State ex rel. Spire v. Northwestern Bell Telephone Co.* 24 Creighton L. Rev. 649 (1991).

NOTES APPLICABLE TO ENTIRE CHAPTER

CROSS REFERENCES.

Constitutional provisions:

Public service companies:

Capital stock, no increase without permit, see Article X, § 5, Constitution of Nebraska.

Consolidation, not without permit, see Article X, § 3, Constitution of Nebraska.

Discrimination, extortion, prohibited, see Article X, § 7, Constitution of Nebraska.

Dividends, payable only from earnings, see Article X, § 5, Constitution of Nebraska.

Physical connection, exchange of service, may be required, see Article X, § 3, Constitution of Nebraska.

Property and franchises, may be taken for public use, see Article X, § 6, Constitution of Nebraska.

Public Service Commission, powers and duties, see Article IV, § 20, Constitution of Nebraska.

Report to Public Service Commission, see Article X, § 1, Constitution of Nebraska.

Special privileges or franchises, Legislature may not grant, see Article III, § 18, Constitution of Nebraska.

Counterfeit coins, tokens, slugs, illegal use of, see § 28-515.

Electric companies, facilities, service, regulation, see Chapter 70, article 4.

Electric cooperative corporations, see Chapter 70, article 7.

Employment regulations, laborer's service letter, see §§ 48-209 to 48-211.

Falsification of records or reports, penalty for, see §§ 28-909 and 28-910.

Favors to municipal officers prohibited, see §§ 18-305 to 18-312.

Franchise tax on public service companies, report, see §§ 77-801 to 77-804.

Industrial disputes, jurisdiction of Court of Industrial Relations, see Chapter 48, article 8.

Municipal powers of:

Cities of the metropolitan class, see §§ 14-106 to 14-109.

Cities of the primary class, see §§ 15-222 and 15-266.

Cities of the first class, see §§ 16-209, 16-210, 16-224, 16-673, and 16-679.

Cities of the second class and villages, see §§ 17-139, 17-140, and 17-528 to 17-528.03.

Political contributions prohibited, when, see § 14-225.

Public Service Commission, jurisdiction and powers, see Chapter 75.

Right-of-way for pole lines, see Chapter 70, article 3.

Theft of services, prohibited, penalty, see § 28-515.

Wholesale service to municipalities, when required, see § 19-708.

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*** CURRENT THROUGH THE 1995 FIRST SESSION OF THE LEGISLATURE ***

CHAPTER 86. TELECOMMUNICATIONS AND EXPRESS COMPANIES
ARTICLE 8. TELECOMMUNICATIONS

R.R.S. Neb. § 86-802 (1995)

§ 86-802. Terms, defined

For purposes of sections 75-109, 75-604, 75-609, and 86-801 to 86-811, unless the context otherwise requires:

- (1) Basic local exchange rate shall mean the flat monthly charge for an access line, whether the service is provided on a flat or measured basis, imposed by a telecommunications company for basic local exchange service, but shall not include any charges resulting from action by a federal agency or taxes imposed by a governmental body which are billed by a telecommunications company to its customers;
- (2) Basic local exchange service shall mean the access and transmission of two-way switched voice communications within a local exchange area;
- (3) Business service shall mean telecommunications service which is used for occupational, professional, or institutional purposes;
- (4) Commission shall mean the Public Service Commission;
- (5) Extended service area shall mean a grouping of two or more exchanges which allows subscribers of one exchange in the group to place and receive two-way switched communications to and from subscribers in one or more other exchanges in the group without an interexchange toll charge;
- (6) Interexchange service shall mean the access and transmission of communications between two or more local exchange areas, except for two-way switched communications between local exchanges that are included in the same extended service area;
- (7) Inter-LATA interexchange services shall mean interexchange telecommunications services originating and terminating in different LATAs;
- (8) Intra-LATA interexchange services shall mean interexchange telecommunications services that originate and terminate within the same LATA;
- (9) LATA shall mean local access transport area as defined by applicable federal law, rules, or regulations;
- (10) Local exchange area shall mean a territorial unit established by a

R.R.S. Neb. § 86-802 (1995)

telecommunications company for the administration of communications services within a specific area generally encompassing a city, town, or village and its environs as described in maps filed with and approved by the Public Service Commission;

(11) Residence service shall mean telecommunications service which is furnished to a dwelling and which is used for personal or domestic purposes and not for business, professional, or institutional purposes; and

(12) Telecommunications company shall mean any person, firm, partnership, limited liability company, corporation, association, or governmental entity offering communications services to the public for hire in Nebraska intrastate commerce.

HISTORY: Laws 1986, LB 835, § 2; Laws 1993, LB 121, § 554.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading.

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*** CURRENT THROUGH THE 1995 FIRST SESSION OF THE LEGISLATURE ***

CHAPTER 86. TELECOMMUNICATIONS AND EXPRESS COMPANIES
ARTICLE 8. TELECOMMUNICATIONS

R.R.S. Neb. § 86-803 (1995)

§ 86-803. Telecommunications companies; extent of regulation by commission; change in rate; limitations; procedure; review; when; subscriber complaint; tax law change; disposition of revenue; order; appeal

(1) Except as provided in sections 86-801 to 86-811, telecommunications companies shall be subject to regulation by the commission. Telecommunications companies shall not, however, be subject to any rate regulation by the commission and shall not be subject to provisions as to rates and charges prescribed in Chapter 75, articles 1 and 6. Telecommunications companies shall, instead, file rate lists for their telecommunications services which shall be effective after ten days' notice to the commission with the exception of monthly rates for basic local exchange services.

(2) Except as provided in subsection (4) of this section, monthly basic local exchange rates may be changed by a telecommunications company after sixty days' notice to all affected subscribers. Such notice shall include (a) the reasons for the rate increase, (b) a description of the affected service, (c) an explanation of the right of the subscriber to petition the commission for a public hearing on the rate increase, (d) a list of exchanges which are affected by the proposed rate increase, and (e) the dates, times, and places for the public informational meetings required by this section. A telecommunications company which proposes to increase its basic local exchange rate shall hold at least one public informational meeting in each public service commissioner district as established by section 75-101.01 in which it provides basic local exchange service prior to the effective date of the rate increase. If the telecommunications company presently charges different rates for residential or business basic service among various exchanges, increases or decreases in basic local exchange rates need not be uniform for all exchanges until all residential basic local exchange rates are fully equalized and all business basic local exchange rates are fully equalized. Thereafter, the amount of any increase or decrease in a business basic local exchange rate or residential basic local exchange rate made pursuant to this section shall be the same for all business service subscribers or for all residential service subscribers within the local service area of the telecommunications company making such increase or decrease. For purposes of this section, local service area shall mean the total area within the state for which a basic local exchange service is provided by a telecommunications company.

(3) The commission shall review basic local exchange rates set by any telecommunications company only upon formal complaint signed by (a) five percent

of all affected subscribers if the telecommunications company has up to fifty thousand access lines in service, (b) three percent of all affected subscribers if the telecommunications company has fifty thousand but not more than two hundred fifty thousand access lines in service, or (c) two percent of all affected subscribers if the telecommunications company has more than two hundred fifty thousand access lines in service. The complaint shall specifically set forth the particular rate or charge as to which review is requested, the reasons for the requested review, and the relief which the complainants desire. If a proper complaint is presented to the commission within sixty days from the date notice of the rate change was sent to affected subscribers of a telecommunications company that has up to fifty thousand access lines in service or within one hundred twenty days from the date notice of the rate change was sent to affected subscribers of a telecommunications company that has fifty thousand or more access lines in service, the commission shall accept and file the complaint and, upon proper notice, may suspend the rates and charges at issue during the pendency of the proceedings and reinstate the rates and charges previously in effect and shall hold and complete a hearing thereon within ninety days after filing to determine if the rates as proposed are fair, just, and reasonable. The commission may, within sixty days after close of the hearing, enter an order adjusting the rates and charges at issue, except that the commission may not set any rate or charge below the actual cost of providing such service as established by the evidence received at the hearing. In such order, the commission may order a refund of amounts collected in excess of the rates and charges as approved at the hearing which may be paid as a credit against billings for future services. A telecommunications company shall not increase its rates without the approval of the commission for six months from the date the commission enters such order. If the commission fails to enter any order within sixty days after the close of the hearing, the complaint shall be deemed denied and the rates and charges shall be deemed approved for all purposes, including for purposes of appeal. For purposes of this section, actual cost shall also include a ratable portion of administrative expenses and overhead incurred by the telecommunications company in its operations and the appropriate amortization of previously deferred accounting costs.

(4) A telecommunications company may at any time file an application with the commission requesting the commission to prescribe fair, just, and reasonable rates for the company or such telecommunications company may elect to proceed, if eligible, under section 75-609.01. Such proceedings shall be governed by Chapter 75, articles 1 and 6, and shall not be limited by subsection (2) of this section. Any rate so set may thereafter be adjusted as provided in subsections (1) and (2) of this section.

(5) In setting rates for interexchange services, telecommunications companies that provide such services shall continue to average their rates for all such services on a statewide basis unless the commission, upon application and hearing, orders otherwise. This subsection shall not prohibit volume discounts or other discounts based on reasonable business purposes. With regard to interexchange telecommunications services, nothing in sections 86-801 to 86-811 shall preempt or affect any right, liability, cause of action, duty, or obligation arising from any law with regard to unfair business practices or anticompetitive activity.

(6) The commission shall retain quality of service regulation over the services provided by all telecommunications companies and shall investigate and

resolve subscriber complaints concerning quality of telecommunications service, subscriber deposits, and disconnection of service. If such complaint cannot be resolved informally, then, upon petition by the subscriber, the commission shall set the matter for hearing in accordance with the commission's rules and regulations for notice and hearing and may by order render its decision granting or denying in whole or in part the subscriber's petition or provide such other relief as is reasonable based on the evidence presented to the commission at the hearing. Any such order of the commission may be enforced against any telecommunications company as provided in sections 75-140 to 75-145 and may be appealed.

(7) Except as provided in subsection (4) of this section, the commission may, on its own motion, review basic local exchange rates of any telecommunications company if the company has increased such rates by more than ten percent within any consecutive twelve-month period. The commission shall hold and complete a hearing on such rates within ninety days after first giving notice of such hearing to the telecommunications company to determine if the rates as proposed are fair, just, and reasonable. The commission may, within sixty days after close of the hearing, enter an order adjusting the rates and charges at issue, except that the commission may not set any rate or charge below the actual cost of providing such service as established by the evidence received at the hearing. In such order, the commission may order a refund of amounts collected in excess of the rates and charges as approved at the hearing which may be paid as a credit against billings for future services. If the commission fails to enter any order within sixty days after the close of the hearing, the rates and charges shall be deemed approved for all purposes, including for purposes of appeal. For purposes of this subsection, actual cost shall also include a ratable portion of administrative expenses and overhead incurred by the telecommunications company in its operations and the appropriate amortization of previously deferred accounting costs.

(8) The commission may order that flat rate services shall be available whenever measured service is implemented and that for such services the price restrictions prescribed in sections 86-801 to 86-811 shall be retained. Measured service shall mean basic local exchange service, the rate for which is a combination of a flat rate access line charge plus usage charges which may be based upon number of calls, length of call, distance, and time of day.

(9) The commission shall approve the disposition of revenue resulting from decreases in federal or state income taxes or property taxes due to a tax law change that results in a reduction in the tax liability of a telecommunications company of twenty percent or more in any taxable year. Any telecommunications company so affected shall file a plan with the commission proposing the disposition of the revenue at the same time that it files its annual report with the commission. The commission shall schedule a public hearing within thirty days of the filing of the plan or the plan shall be deemed approved.

(10) Rates being charged by telecommunications companies on January 1, 1987, shall be deemed to be the effective rates until changed or altered pursuant to sections 86-801 to 86-811.

(11) No telecommunications company may change its basic local exchange rate within ninety days after entry of a final order adjusting such rate pursuant to